

§ 35A-1351. Prerequisites to approval of gift.

The judge shall not approve the gift unless it appears to the judge's satisfaction that:

- (1) It is improbable that the incompetent will recover competency during his or her lifetime;
- (2) The estate of the incompetent, after making the gift and after payment of any gift taxes which may be incurred by reason of the declaration of irrevocability, will be sufficient to provide reasonable and adequate income for the support, maintenance, comfort and welfare of the incompetent and those legally entitled to support from the incompetent in order to maintain the incompetent and such dependents in the manner to which the incompetent and such dependents are accustomed and in keeping with their station in life (and in no event less than twice the average, for the five calendar years preceding the calendar year of such gift, of expenditures for the incompetent's support, maintenance, comfort and welfare);
- (3) Each donee of any part of the life interest is a donee to which a competent donor could make a gift, without limit as to amount, without incurring federal or State gift tax liability;
- (4) Each donee of any part of the life interest is a donee qualified to receive tax deductible gifts under federal and State income tax laws.
- (5) Either:
 - a.
 1. The incompetent, prior to being declared incompetent, executed a paper-writing, with the formalities required by the laws of North Carolina for the execution of a valid will;
 2. Specific devises of specific amounts of money, income or property included in such paper-writing, will not be jeopardized by making such gifts;
 3. All residuary devisees designated in such paper-writing, who would take under the paper-writing if the incompetent died contemporaneously with the signing of the order of approval of such gifts, and such paper-writing was probated as the incompetent's will and the spouse, if any, of such incompetent have been given at least 10 days' written notice that approval for such gifts will be sought and that objection may be filed with the clerk of superior court, of the county in which the guardian or trustee was appointed, within the 10-day period; or
 - b.
 1. That so far as is known the incompetent has not prior to being declared incompetent, executed a will which could be probated upon the death of the incompetent; and
 2. All persons who would share in the incompetent's estate, if the incompetent died contemporaneously with the signing of the order of approval, have been given at least 10 days' written notice that approval for such gifts will be sought and that objection may be filed with the clerk of the superior court, of the county in which the guardian or trustee was appointed, within the 10-day period. (1963, c. 113, s. 2; 1987, c. 550, s. 6; 2011-284, s. 43.)